

JAGLAZAC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 610 (JGK)

5 AVIRAM AZARI,

Conference

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 16, 2019
4:30 p.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the
Southern District of New York

16 **EUN-YOUNG CHOI**

OLGA ZVEROVICH

17 Assistant United States Attorneys

18 MOSES & SINGER

Attorney for Defendant

19 **BARRY S. ZONE**

20 Also Present:

Chase Primurch, FBI Special Agent

21 Meir Turner, Hebrew Interpreter

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1 (Case called)

2 THE COURT: Good afternoon, all.

3 MS. CHOI: Good afternoon, your Honor.

4 Eun-Young Choi, on behalf of the government. With me
5 at counsel table is Olga Zverovich of our office and Chase
6 Primurch, who is a special agent for the FBI.

7 DEPUTY CLERK: And for the defendant?

8 MR. ZONE: Good afternoon, your Honor.

9 Barry Zone, for Mr. Azari, who sits beside me.

10 How are you?

11 THE COURT: Good afternoon. Fine. Thank you.

12 I note that we have an interpreter present.

13 And is your oath on file?

14 THE INTERPRETER: Yes, your Honor.

15 THE COURT: Okay. Thank you.

16 Ms. Choi, where are we?

17 MS. CHOI: Your Honor, we have started discovery --
18 well, let me take a step back. The defendant was arrested on
19 September 29th upon entry into the country. He was presented
20 and arraigned before Magistrate Judge Fox the next day,
21 September 30th.

22 We've started discovery. It's been limited to --

23 THE COURT: I'm sorry. The defendant was arrested and
24 arraigned on September the 30th.

25 MS. CHOI: He was arrested on September 29th, your

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1 Honor, which was a Sunday morning, when he flew into JFK from
2 Israel.

3 THE COURT: Okay.

4 MS. CHOI: He then was presented the next day, which
5 was that following Monday before Magistrate Judge Fox, who
6 arraigned him on the S1 indictment in this case.

7 THE COURT: And did the magistrate judge exclude time?

8 MS. CHOI: He did exclude time till today, your Honor.

9 THE COURT: Okay. And so is that one day off the
10 speedy trial clock?

11 MS. CHOI: I think not. I think it goes from the
12 initial appearance, which would have been that Monday. So I
13 think no days have run.

14 THE COURT: Does defense counsel agree?

15 MR. ZONE: Yes, your Honor.

16 THE COURT: Okay. No time off speedy trial clock.

17 Okay. Ms. Choi, tell me about the case.

18 MS. CHOI: Yes, your Honor.

19 The defendant is charged in a variety of independent
20 counts, dealing with his facilitation of what we call a
21 spear-fishing campaign. And I don't know if your Honor is
22 familiar with that general type of campaign. But, in essence,
23 he was an individual who directed groups of hackers as to
24 specific individuals' accounts to hack. Those hackers would
25 then go about stealing users' credentials mainly through a

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1 technique we describe as "spear-fishing," sending emails that
2 are designed to look like they're coming from trusted providers
3 such as Google, Yahoo, Apple and the like, or from the
4 individuals' place of work. The victims would then click on
5 those emails, which would redirect them to servers that were
6 being controlled by the hackers themselves that, again, were
7 set up to resemble trusted providers or the individuals' place
8 of work. The individuals would then attempt to log in to those
9 websites; it would be to theft of credentials. The hackers
10 would then use those credentials that they had stolen in order
11 to steal the content of the accounts, which include email
12 accounts, both work and personal; social media accounts; online
13 storage, etc. And then they would send updates to this
14 defendant about their status.

15 THE COURT: Okay. And what's the state of discovery?

16 MS. CHOI: Your Honor, we've started discovery. It's
17 limited as of today, in part because the parties are
18 negotiating a protective order to govern. I can tell
19 your Honor about the type of data and discovery we anticipate
20 in this case, if you'd like.

21 THE COURT: Okay.

22 MS. CHOI: It basically falls into two types of
23 electronic evidence, for the most part. The first category
24 would be search warrant returns of various email accounts that
25 were used both by the defendant and by his coconspirators in

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1 furtherance of the hacking scheme. It would include
2 communications between him and his various coconspirators.
3 That's sort of category one. That's a significant amount of
4 data. We conservatively estimate it would be over terabytes
5 worth of data produced to the defendant in and of itself. And
6 we're still compiling it trying to figure out how big that
7 tranche would be.

8 The second tranche of data is that the defendant
9 showed up into the country with two personal devices -- two
10 iPhones. We're in the midst of getting those downloaded. We
11 got search warrants from the magistrate for the search of
12 those. We're still working on getting the contents out. When
13 we have the full contents of those, we'll produce those to the
14 defendant. As of now we don't know what the size of that will
15 be, but I think significantly less than email search warrant
16 returns. And to be clear, the email search warrant returns
17 also include online accounts, storage accounts; not just the
18 emails themselves and various other items that were stored by
19 the defendant and the coconspirators -- of the online storage.

20 THE COURT: When do you expect the discovery to be
21 complete?

22 MS. CHOI: I think that if we can negotiate the
23 protective order, we can get a copy to defense counsel within a
24 month. At least the vast majority of the electronic data from
25 the search warrant. To the extent that we're also going to

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1 produce that data to the defendant, that might take some more
2 time, because logistics in trying to get email data and online
3 data to a defendant, who is incarcerated, sometimes takes a
4 little bit longer than that. But I think we can get it done
5 pretty expeditiously.

6 THE COURT: Okay. Thank you.

7 Does the defense want to tell me anything?

8 MR. ZONE: Your Honor, we have been in touch with the
9 prosecutor, so we're aware of everything she tells the Court.
10 We're anxious to take a look at the discovery. I just received
11 a protective order. So I just want to have a chance to look at
12 it and I'll discuss it with Ms. Choi.

13 I would also indicate that -- and this is a side issue
14 but I want the Court to be aware. Perhaps you can assist and
15 send a communication to the jail. In the beginning we've asked
16 I think Magistrate Judge Fox to order that Mr. Azari be given
17 kosher food. And to date, that has not occurred. So if you
18 could -- however it is that you communicate with them --

19 THE COURT: Do you know if the magistrate judge has
20 entered any orders to that effect?

21 MR. ZONE: I think he did.

22 MS. CHOI: Your Honor, he did orally, and I think that
23 the docket in fact reflects Mr. Azari's religious status in
24 requesting that he be accommodated.

25 THE COURT: Can the government make inquiries of the

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1 -- is the defendant kept at the MCC or the MDC?

2 MS. CHOI: Your Honor, he's kept at the MCC. And this
3 is the first we've heard of the inability to get kosher meals.
4 We'll put in a call with the BOP to make sure that we can --

5 MR. ZONE: We do appreciate that, your Honor.

6 THE COURT: Can the government send me a letter about
7 what the results of the inquiry at the MCC is?

8 MS. CHOI: We can do that, your Honor.

9 THE COURT: Okay. All right. What I would do is set
10 the case down for another conference after defense has had the
11 opportunity to review discovery and to determine what motions,
12 if any, the defense intends to make. So I would normally set
13 the case down for about 60 days from now, could be longer.
14 Whatever is convenient for the parties.

15 Yes, Ms. Choi.

16 MS. CHOI: Your Honor, we've already consulted with
17 your deputy. We would ask for a longer adjournment till
18 towards the end of February, in part, for two reasons. One is
19 both myself and Ms. Zverovich are actually -- we're going to
20 have trials in the interim, and so we want to make sure that
21 we'll be available for the Court when that date comes. As
22 well, I think it's just the amount of discovery in this case.
23 It's not a simple case. It is quite a significant amount of
24 data. So I think it would be to the defense's benefit to have
25 that extra time to determine what motions, if any, they wish to

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1 file.

2 We will expedite and prioritize the affidavits, for
3 instance, that would form the basis for the searches that were
4 executed in this case.

5 THE COURT: Did you talk about an actual date with
6 Mr. Fletcher?

7 MS. CHOI: Yes, your Honor.

8 The date that Mr. Fletcher gave to us that he said the
9 Court was available on is February 25th of 2020, at 4:30 p.m.

10 THE COURT: Is that 25th or 26th?

11 MS. CHOI: Two-five, your Honor. The 25th.

12 THE COURT: Okay. Is that convenient for you also,
13 Mr. Zone?

14 MR. ZONE: It is, Judge.

15 A couple things that I wanted to mention.

16 THE COURT: Sure.

17 MR. ZONE: With the size of that amount of data, what
18 I would ask is that the material be produced to the MCC. We
19 are in the process of trying to put together a bail package. I
20 can't say when that'll be. But just, you know, to be careful
21 about this, I'd advise -- or ask the U.S. attorney to provide
22 whatever I get to the jail so he can start to review when they
23 start to produce it, and then advise me what sort of drive they
24 would require to be able to fit all of this on it, and if
25 there's a person who I could contact. I know they're going to

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1 be on trial. If we have a problem opening any of the files, or
2 any of that sort of stuff.

3 I'm just thinking ahead because it is a lengthy
4 adjournment, there is a lot of material. And if there they're
5 on trial, sometimes -- and I know -- I've known Ms. Choi for a
6 long time. She's very diligent. She's always returned my
7 call. But if you're on trial, sometimes a couple days can go
8 by. And I just want to make sure we're in a position to
9 resource whatever we need.

10 All right, your Honor?

11 THE COURT: Okay.

12 Ms. Choi.

13 MS. CHOI: I think that won't be a problem,
14 your Honor. We'll make efforts to get the discovery produced
15 to the defendant.

16 We note that there is an issue here in or view, which
17 is that there are significant numbers of victims that were
18 targeted by the defendant and his coconspirators. And so we
19 may have to work out with defense what to do with regard to
20 that data. But certainly there will be data that we can put on
21 a hard drive to the defendant. And we can produce all of the
22 data to defense counsel without an issue, even as contemplated
23 on the protective order.

24 THE COURT: Okay. And also it seems like a reasonable
25 request to have an alternative contact person while you're on

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1 trial.

2 MS. CHOI: Yes.

3 Your Honor, we'll find an AUSA. And we also have a
4 paralegal who's here today who's handling the case. We'll make
5 sure Mr. Zone has someone to contact if he can't contact either
6 one of us.

7 THE COURT: Okay. Fine.

8 If there are any problems that develop over the course
9 of the next few months, just send me a letter. And if it's
10 necessary for me to have another conference with you before
11 February 25th, I will. So meanwhile, another conference is
12 scheduled for February 25th, 2020, 4:30 p.m.

13 I will exclude prospectively the time from today until
14 February 25th, 2020, from speedy trial calculations. The
15 continuance is designed to assure effective assistance of
16 counsel. It's designed to allow the government to make
17 discovery, and the defense to review it. It's required because
18 of the complexity of the case and the amount of discovery. The
19 Court finds that the ends of justice served by ordering a
20 continuance outweigh the best interests of the defendant and
21 the public in a speedy trial. This order of exclusion is made
22 pursuant to 18 U.S.C., Section 3161(h) (7) (A) .

23 All right. Anything further?

24 MS. CHOI: Not for the government, your Honor. Thank
25 you.

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1 THE COURT: Anything from the defense?

2 MR. ZONE: Not from the defense, your Honor. Thank
3 you.

4 THE COURT: Okay. Good afternoon, all.

5 Oh, by the way, I should ask:

6 Ms. Choi, how did you mark the case? I don't have the
7 initial sheet in front of me? A, B or C?

8 MS. CHOI: It was C, your Honor.

9 THE COURT: What's your estimated length of trial?

10 MS. CHOI: It depends, but I would say two to three
11 weeks, at least.

12 THE COURT: Okay. Thank you.

13 (Adjourned)

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